

Richard D. Coit
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DOCKET FILE COPY ORIGINAL

December 20, 2000

Ms. Magalie Roman-Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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DEC 21 2000

FCC MAIL ROOM

Re: WT Docket # 00-239

In the Matter of Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is subject to Regulation as Local Exchange Service

Dear Ms. Roman-Salas:

Enclosed please find one original and four copies of the Comments of the South Dakota Independent Telephone Coalition, Inc. in reference to WT Docket # 00-239 in response to Public Notice DA-00-2622. In accordance with the instructions in the Public Notice, copies have been sent to Rose Crellin, the FCC Policy and Rules Branch, the FCC Public Reference Room, International Transcription Service and all others named on the Certificate of Service.

Thank you for your assistance.

Sincerely,



Richard D. Coit
Executive Director and
General Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Petition of the State Independent Alliance
and the Independent Telecommunications
Group for a Declaratory Ruling that the
Basic Universal Service Offering Provided
by Western Wireless in Kansas is subject to
Regulation as Local Exchange Service

WT Docket No. 00-239
Before the Wireless
Telecommunications Bureau,
Commercial Wireless Division,
Policy & Rules Branch

**COMMENTS OF
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION
ON RURAL TASK FORCE RECOMMENDATION**

The South Dakota Independent Telephone Coalition, Inc. ("SDITC") submits these comments in response to the Commission's Public Notice issued in the above captioned proceeding on November 21, 2000. (DA-00-2622). By such Notice the Commission has invited comments on a Petition for Declaratory Ruling filed by the State Independent Alliance and Independent Telecommunications Group, a group of 37 independent telephone companies located in the State of Kansas ("Independents"). Based upon their Petition, the Independents seek a ruling from this Commission clarifying that the "Basic Universal Service" offering of WWC Holding Company, Inc. d/b/a Cellular One ("Western Wireless") in the State of Kansas is a fixed service rather than a "Commercial Mobile Radio Service ("CMRS") and that, as such, it is subject to regulation in that State as a local exchange service.

SDITC is an organization representing the interests of numerous independent, cooperative and municipal local exchange carriers in the State of South Dakota. SDITC has an interest in the proceeding because Western Wireless has also indicated plans to offer the wireless service described in the Kansas petition in rural service areas throughout South Dakota.

With these comments, SDITC expresses its full support for the Kansas Petition and the position of the Kansas Independents as stated therein. The Commission recently in its *Second Report and Order and Order on Reconsideration* released in WT Docket No. 96-6 determined that because of the evolving nature of fixed wireless services it would make determinations as to the regulatory treatment of such services on a case-by-case basis.¹ In the *Further Notice of Proposed Rulemaking* (“FNPR”) that led to this determination the Commission provided explanation as to why the regulatory treatment issue would have to be addressed on a case-by-case basis. Specifically, the Commission stated:

Some parties have also argued that because these fixed wireless services would be provided by CMRS providers in spectrum that has been allocated for CMRS, the service providers must therefore be regulated as CMRS. We disagree. The regulatory structure for providers of the primary service to which the spectrum is allocated does not necessarily dictate the type of regulation to which every service provider in that same band will be subject regardless of the particular attributes of that service. A pertinent example is BETRS. While BETRS is provided in a spectrum band allocated to Public Land Mobile Service, we have determined that BETRS is a fixed service, rather than a mobile service, and therefore BETRS providers are not subject to CMRS regulation under Section 332. Similarly, private service licensees in the 220 and 800 MHz SMR bands are not subject to CMRS regulation. Likewise, we do not intend to base our decision here merely on the classification of the majority of users of the spectrum in which the fixed service in question is provided.²

Using the same rationale explained above which was followed in classifying BETRS for regulatory purposes, this Commission should focus its review in this proceeding on the particular attributes of the service and on the specific issue of whether the service is “fixed” or “mobile.” If a finding is made that the wireless service is “fixed,” the provisions of 47 U.S.C. § 332(c)(3) which generally preempt State or local regulation over the entry of or the rates charged for any “commercial mobile service” must be viewed as inapplicable. This is so because, clearly, the

¹ FCC 00-246, In the Matter of Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, released July 20, 2000.

² *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-283, par. 52, WT Docket No. 96-6, released August 1, 1996.

intent of the Section 332(c)(3) provisions is merely to prohibit State or local entry and/or rate regulation over certain mobile wireless services. No reference is made in the statute to any preemption concerning “fixed” wireless services and the statute also expressly provides that it does not “exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange services for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.” This additional language contained in Section 332(c)(3) further indicates that “fixed” wireless services are to be viewed differently in applying the general preemption provisions found in the statute.

The Independents of Kansas, consistent with this Commission’s *Second Report and Order*, have sought a declaratory ruling to address their specific circumstances and have presented facts which convincingly establish that the Western Wireless universal service offering is a “fixed” rather than a “mobile” wireless service. As pointed out in the Kansas Petition, 47 U.S.C. § 3(27) defines “mobile service” as a service involving “mobile stations” and 47 U.S.C. § 3(28) defines “mobile stations” as a “radio-communications station capable of being moved and which ordinarily does move.” *Emphasis added.* Although Western Wireless claims in Kansas and elsewhere that its fixed wireless basic universal service offering should be considered CMRS because it has a “mobile capability,” the facts as set forth in the Kansas Petition clearly indicate that this is not the case. The Kansas petition cites many facts indicating that the Western Wireless universal service offering is intended to serve as a substitute to existing landline telephone services and that the “Fixed Wireless Terminal” to be used by consumers in accessing the wireless service is not designed to be used in a mobile fashion. As stated in the Petition, “[f]or the Commission to accept [Western Wireless’s] claim, it must render the key statutory

phrase “ordinarily does move” entirely meaningless, and change the statutory definition of “mobile station” to “capable of being moved with considerable difficulty and inconvenience.”

With respect to Western Wireless’s claim that its wireless universal service offering has some “mobile capability,” SDITC joins the Independents of Kansas to dispute such claim. Within the context of the ETC designation proceedings held in South Dakota involving Western Wireless, the South Dakota Public Utilities Commission took considerable evidence relating to the company’s planned wireless universal service offering.³ Attached hereto for the Commission’s review as Appendix A are copies of written testimony presented by Western Wireless in the South Dakota case. As indicated throughout this testimony, the service offering in South Dakota, like that in Kansas, is described as being offered through the provisioning of “fixed wireless local loops.” The testimony also without question indicates that the Western Wireless universal service offering is intended as a substitute to the existing landline local exchange services. The testimony states that the service offering would be configured to provide “dial tone” to the end-user, giving consumers “the ability to connect their existing telephones to the wireless network.” Appendix A, Direct Testimony of Christopher R. Johnson, page 8. It also states that “[u]nder limited circumstances (e.g. no wireless coverage and inability to expand coverage), GCC [Western Wireless] may combine its own facilities-based service offerings with the resale of services offered by other facilities-based carriers.” *Id.* This statement noting that Western Wireless may in some areas resell existing landline services to fill the gaps in its wireless coverage demonstrates further the company’s intent to provide an actual substitute to local exchange service.

It is also indicated by the testimony of Western Wireless in South Dakota that its initial offering of service would not even include a “mobility component.” See Appendix A, “Direct

³ PUC Docket TC98-146, In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier.

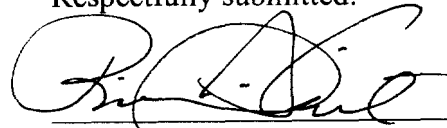
Testimony of Christopher R. Johnson,” p. 8. This testimony conflicts with the claim made by Western Wireless in Kansas that its universal service offering in has a “mobile capability.”

The facts presented in South Dakota concerning the universal service offering of Western Wireless lead to the same conclusion supported by the Kansas Petition. Western Wireless is offering a “fixed” wireless service that is intended as a substitute to the existing landline local exchange services. Under these circumstances, where the service at issue clearly does not meet the definition of “mobile service” and is intended as a substitute local exchange service, the preemption language set forth in Section 332(c)(3) does not apply and the State may regulate the fixed wireless service in the same way that it regulates any other local exchange service.

SDITC urges the Commission to grant the declaratory ruling and issue a decision consistent with the request of the Kansas Independent Alliance and the Independent Telecommunications Group.

Dated this 20th day of December, 2000.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Richard D. Coit', is written over a horizontal line.

Richard D. Coit
SDITC General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original and four (4) copies of the foregoing document were sent by Federal Express on the 20th day of December, 2000 to:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, DC 20554

Paper copies were sent by First Class Mail via U.S. Postal Service to:

Rose Crellin
Federal Communications Com.
445 12th Street SW – Room 4A-160
Washington, DC 20554

Public Reference Room
Federal Communications Com.
445 12th Street SW
Washington, DC 20554

Policy & Rules Branch
Commercial Wireless Division
Wireless Telecom. Bureau
Federal Communications Com
445 12th St SW – Room 4A-207
Washington, DC 20554

One paper copy and an electronic disk copy were sent by First Class Mail via U.S. Postal Service to:

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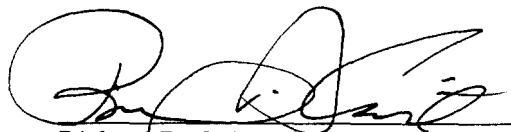
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Dated this 20th day of December, 2000.



Richard D. Coit
Executive Director and General Counsel
South Dakota Independent Telephone Coalition

APPENDIX A

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING)
BY GCC LICENSE CORPORATION)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)

TC98-146

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UTILITIES COMMISSION
FAX Received NOV 25 1998

DIRECT TESTIMONY OF CHRISTOPHER R. JOHNSON

Q. Please state your name, employer, and business address.

A. My name is Christopher R. Johnson. I am an employee of Western Wireless Corporation ("Western Wireless"), the parent corporation of GCC License Corporation ("GCC"), which is doing business in South Dakota as Cellular One. My business address and telephone number is as follows:

Western Wireless Corporation
3650 131st Ave., SE
Bellevue, Washington 98006
425-586-8700 (tel)
425-586-8090 (fax)

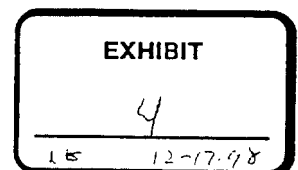
Q. What is your position and responsibility within Western Wireless?

A. I am currently Senior Manager of Regulatory Affairs for the Company, responsible for state legislative and regulatory affairs. Previously, I was the Regulatory Manager for the Company, responsible for FCC licensing and regulatory compliance.

Q. Please identify your education, experience, and professional qualifications.

A. I graduated from California State University Sacramento in 1982 with a Bachelor of Arts degree in Communications and Government. In 1987, I completed a Paralegal Certificate program at Barclay College and have participated in several educational conferences and

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seminars on wireless telecommunications, including a Cellular Radio course at the University of Wisconsin in 1994.

Q. Does Western Wireless currently provide telecommunications service in South Dakota?

A. Yes. Western Wireless is authorized by the FCC to provide cellular telephone service throughout the state of South Dakota and holds radio licenses to provide Personal Communications Service ("PCS") and Local Multipoint Distribution Service ("LMDS") in South Dakota.

Q. Please describe the cellular services offered by GCC today and the area of South Dakota served by GCC.

A. GCC provides mobile telephony and data services to consumers in every county in South Dakota. GCC's cellular coverage in South Dakota is extensive, covering more than 98% of the population and geography of the state. The Company serves populated areas and rural areas alike. The services offered by the Company include mobile telephony, data/facsimile, 911, voice mail, and several other features and services. GCC has been an active member of the community and has been instrumental in serving the communications needs of South Dakota.

Q. In addition to the current services provided using the cellular licenses held by GCC, you stated that the Company also holds radio licenses to provide PCS and LMDS. Could you explain what services will be provided to consumers using PCS and LMDS licenses?

A. PCS is similar to cellular service, but operates on a different frequency band and is being deployed using state-of-the-art digital systems. PCS systems, including those systems deployed by GCC, are providing various services to consumers, including wireless local loop services, advanced digital cordless telephones, portable facsimile services, wireless PBX services, wireless local area network ("LAN") services, and mobile telephony and data services. GCC holds PCS licenses to serve the entire state of South Dakota and will use these licenses to provide new and innovative telecommunications services to consumers. GCC also holds LMDS licenses to serve the entire state of South Dakota and is in the initial stage of designing and implementing LMDS systems. LMDS is a broadband point-to-multipoint wireless communications service capable of providing high-speed data and telephony services to businesses and residential consumers. The combination of its cellular, PCS, and LMDS spectrum throughout the state of South Dakota uniquely positions GCC to serve the communications needs of rural and urban consumers in the state. Unlike many competitive carriers that choose to serve only urban areas, GCC prides itself in serving the entire state.

Q. Turning to universal service, does the Company and its customers currently contribute to the funding for universal service?

A. Yes. At the present time, federal regulations require carriers, like GCC, to contribute approximately 3.5 percent of its revenues to the funding for universal service. Although currently there is no state universal service fund in South Dakota, competitive carriers, like GCC, indirectly subsidize local exchange service in the state through the

interconnection rates and access charges paid to the local exchange carriers ("LECs").

Other states, however, such as Wyoming, Oklahoma, and Kansas, have established state universal service funds that require carriers, like GCC, to contribute up to 6 percent or more of its revenues to universal service. As a contributor to the funding for universal service, GCC has an interest in ensuring that consumers have access to high-quality telecommunications service within its service area.

Q. Is GCC presently able to draw from federal and state established universal service funds for the provision of the supported services?

A. No. Until GCC is designated as an Eligible Telecommunications Carrier ("ETC"), it is not able to draw from federal or state universal service funds. Upon designation as an ETC, GCC will be eligible to receive federal universal service funds and make available to consumers a universal service offering that meets their basic and advanced telecommunications needs. GCC recognizes that a state universal service fund has not been established at this time and that access to the state fund will be governed by rules adopted by this Commission. Without access to universal service funding, competitive carriers, like GCC, will be severely limited in their ability to provide a competitive telecommunications service to consumers in high-cost areas. Unlike urban areas where carriers are able to compete based upon the cost of providing service, rural high-cost areas will not experience the benefits of competition unless competitive carriers are designated as ETC for purposes of universal service support.

Q. What are the purposes of your testimony?

A. The purposes of my testimony are three-fold: first, to explain that GCC meets the criteria for designation as an ETC; second, to describe GCC's plans for providing universal service within the state of South Dakota; and third, to identify the supported services that will be offered by GCC as a universal service provider.

Q. Did your Company file a Petition For Designation As An Eligible Telecommunications Carrier ("ETC") in the state of South Dakota?

A. Yes. The Petition was filed on August 25, 1998.

Q. Why is GCC seeking designation as an ETC?

A. The Telecommunications Act of 1996 provides that a carrier must obtain designation as an ETC from a state commission in order to be eligible to receive universal service support. As a telecommunications provider in predominately in rural areas, GCC is very interested in expanding its service offerings to consumers and making available to consumers a universal service offering that meets their basic and advanced telecommunications needs.

Q. Upon designation as an ETC, is it your Company's intent to obtain universal service support for the provision of universal service to the public?

A. Yes. GCC will use available universal service support for the provision of a wireless local loop service.

Q. Is your Company seeking ETC designation for purposes of federal and state universal service support?

A. Yes. Under the rules adopted by the FCC, federal universal service funding based upon the cost of providing service will not be available until July 1999 in high-cost areas served by non-rural telephone companies and not until the year 2001 in high-cost areas served by rural telephone companies. In the meantime, a limited amount of funding is available to ETCs for providing universal service, but such funding does not come close to the cost of providing service. Thus, until the final cost models are adopted -- July 1999 for non-rural telephone companies and the year 2001 for rural telephone companies -- GCC would have access to only limited universal service funding that would grossly undercompensate the Company for the provision of the supported services and would place GCC at a severe competitive disadvantage with the incumbent telephone companies.

Q. In what areas, is GCC seeking designation as an ETC?

A. GCC is seeking designation as an ETC in all exchanges served by local telephone companies in the counties identified in Exhibit A.

Q. Please identify the requirements for designation as an ETC.

A. Under Section 214(e) of the Communications Act of 1934, as amended, to be designated as an ETC, a carrier must be a common carrier, offer the supported services, advertise the availability of such services using media of general distribution, and make such services available throughout the designated service area. Additionally, for territories served by rural telephone companies, the state commission must conclude that the designation is in the public interest. 47 U.S.C. Sec. 214(e).

Q. As for the requirement that GCC offer the supported service, what are the supported services that must be offered?

A. The Federal Communications Commission ("FCC") has identified the following core services and functionalities supported by universal service:

1. voice-grade access to the public switched telephone network;
2. local usage;
3. dual tone multi-frequency signaling or its functional equivalent;
4. single-party service or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service;
8. access to directory assistance; and
9. toll limitation for qualifying low-income consumers.

47 C.F.R. Sec. 54.101(a).

Q. How will GCC provide the supported services?

A. GCC will provide the supported services using its existing network infrastructure. GCC regularly deploys additional cell sites and channels, as necessary, to maximize coverage and service availability. Initially, GCC plans to use fixed wireless local loops to provide service to consumers. Using fixed wireless local loops optimizes coverage and service availability through the use of high-gain antennas and network equipment at customer

locations. Fixed wireless local loop service provides consumers "dial tone" service and the ability to connect their existing telephones to the wireless network. Using this same network configuration, GCC currently provides "universal service" to residents of Reese River and Antelope Valley, Nevada. Over time, GCC intends to expand its universal service offering to introduce a mobility component. Under limited circumstances (*e.g.*, no wireless coverage and inability to expand coverage), GCC may combine its own facilities-based service offerings with the resale of services offered by other facilities-based carriers.

Q. Does GCC's network infrastructure provide all of the supported services included in universal service?

A. Yes. As previously mentioned, Western Wireless holds cellular, PCS, and LMDS licenses throughout the state of South Dakota and will use this spectrum to provide a range of services to consumers, from basic telephony to advanced telecommunications services. Although not packaged into a universal service offering, GCC currently provides all of the core supported services, except toll limitation for qualifying low-income subscribers, which GCC will provide to qualifying low-income subscribers as part of its universal service offering.

Q. Could you explain each of the supported services and how GCC provides these services?

A. Yes.

Voice-grade access to the public switched telephone network. The FCC concluded that

voice-grade access means the ability to make and receive phone calls, with a bandwidth of approximately 3500 Hertz within the 500 to 4000 Hertz frequency range. There is no requirement to support high speed data transmissions. *See Universal Service Report and Order*, FCC 97-157 at Para. 63. GCC meets this requirement by providing voice grade access to the public switched telephone network. Through its interconnection arrangements with local telephone companies, including U.S. West, all customers of GCC are able to make and receive calls on the public switched telephone network.

Local usage. Beyond providing access to the public switched network, ETCs must include local usage as part of their universal service offering. To date, the FCC has not quantified a minimum amount of local usage that needs to be included in a universal service offering, but has initiated a proceeding to address this issue. *See Universal Service Further Notice of Proposed Rulemaking*, FCC 97-278 (October 25, 1998). GCC will comply with any minimum local usage requirements adopted by the FCC. In the meantime, GCC will meet the local usage requirement by including local usage as part of its universal service offering. For example, as explained below, GCC intends to offer unlimited local usage as part of one of its universal service offerings.

Dual tone multi-frequency ("DTMF") signaling or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF.

GCC currently uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. GCC therefore meets the requirement to provide DTMF signaling or its functional equivalent.

Single-party service or its functional equivalent. The FCC concluded that wireless providers offer the equivalent of single party service to the extent they offer a dedicated message path for the length of a user's particular transmission. *See Universal Service Report and Order*, FCC 97-157 at Para.62. GCC meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

Access to emergency services. The ability to reach a public emergency service provider through dialing '911' is a required universal service offering. Enhanced 911 or E911, including Automatic Numbering Information ("ANI") and Automatic Location Information ("ALI"), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. *See Universal Service Report and Order*, FCC 97-157 at Para. 72-73. GCC currently provides all of its customers with access to a public emergency service provider by dialing 911. To date, no public emergency service provider have made arrangements for the delivery of ANI and ALI from GCC. Nevertheless, the Company intends to provide its fixed universal service subscribers with access to E911 service.

Access to operator services. Access to operator services is defined as any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone

call. *See Universal Service Report and Order*, FCC 97-157 at Para. 75. GCC meets this requirement by providing all of its customers with access to operator services provided by the Company and/or other entities (e.g., LECs, IXC, etc.).

Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive toll or interexchange calls. Equal access, however, is not required. "[W]e do not include equal access to interexchange service among the services supported by universal service mechanisms." *See Universal Service Report and Order*, FCC 97-157 at Para. 78. GCC meets this requirement by providing its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers ("IXCs"). Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

Access to directory assistance. The ability to place a call to directory assistance is a required service offering. White pages directories and listings is not a required service offering. *See Universal Service Report and Order*, FCC 97-157 at Para. 80-81. GCC meets this requirement by providing all of its customers with access to directory assistance by dialing '411' or '555-1212.'

Toll limitation for qualifying low-income consumers. An ETC must offer toll control services to Lifeline customers, at no charge. In particular, ETCs must provide toll blocking, which allows customers to block the completion of outgoing toll calls. *See*

Universal Service Report and Order, FCC 97-157 at Para. 82. GCC does not currently have any Lifeline customers. However, the Company will provide toll blocking services, as it does today for international calls, utilizing the same toll blocking technology. GCC will offer toll blocking services, at no charge, to its Lifeline customers, as part of its universal service offering.

Q. Please describe the quality and reliability of GCC's existing network and its proposed universal service offering.

A. GCC has designed and constructed a highly reliable, top quality telecommunications network for mobile and fixed customers in South Dakota. Because GCC's cellular network is designed to serve mobile customers, it would be inappropriate to compare the voice quality using a handheld mobile phone with the voice quality of a fixed wireline service. This is so because GCC's cellular network has been designed to serve mobile customers that may be close to, and in direct line-of-sight of, a transmitter or several miles from, and not in line-of-sight of, a transmitter. To optimize voice quality for its universal service customers, GCC will construct additional antenna towers, as necessary, and will install fixed wireless network equipment (antennas and transmitters) at customer locations, as it did in Nevada where the Company provides universal service to residential and business customers. In sum, GCC intends to offer a highly reliable and top quality universal service offering that will be equal to or better than the quality and reliability of the wireline system. Otherwise, GCC will not be able to attract and retain universal

service customers.

Q. Can you explain GCC's universal service offering?

A. Yes. GCC anticipates making available to consumers within its designated service areas the federally- mandated supported services with several different service offerings tailored to the consumers' communications needs. One such offering will look similar to services provided today by the LECs with certain enhancements. For a fixed monthly charge, GCC will offer consumers the core services with unlimited local usage, an expanded local calling area larger than offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services, such as voice mail, caller-ID, call waiting, call forwarding, and conference calling. Another offering could be a usage sensitive rate that, for a higher monthly charge, a universal service customer would receive 750 minutes of usage that could be used for state-wide local calling, a per minute charge for interstate calls, and optional features and services. GCC is in the process of finalizing its universal service offerings and its approach to customer-specific issues.

Q. Is designating GCC as an ETC in territories served by rural telephone companies in the public interest?

A. Yes, most definitely. As stated by Senator Dorgan, the interests of consumers are of paramount concern in determining whether the public interest would be served. GCC stands ready to bring the benefits of competition to South Dakotans – benefits of competitive pricing, better service quality, immediate service availability, and better

customer service. There can be no dispute that making available to consumers a choice in services and service providers is in the public interest.

Q. Does this conclude your testimony.

A. Yes.

EXHIBIT A

EXCHANGE AREAS IN WHICH GCC LICENSE CORPORATION IS SEEKING DESIGNATION AS AN ETC

Designation is sought for all exchanges contained within the following counties in South Dakota:

| | | |
|------------|-------------|-----------|
| Minnehaha | Pennington | Campbell |
| Meade | Harding | Walworth |
| Perkins | Butte | Potter |
| Lawrence | Corson | McPherson |
| Ziebach | Dewey | Edmunds |
| Brown | Faulk | Spink |
| Marshall | Roberts | Day |
| Clark | Grant | Codington |
| Hamlin | Deul | Custer |
| Fall River | Shannon | Haakon |
| Stanley | Jackson | Bennett |
| Jones | Lyman | Mellette |
| Todd | Tripp | Gregory |
| Sully | Hughes | Hyde |
| Hand | Buffalo | Jerauld |
| Brule | Aurora | Davison |
| Douglas | Charles Mix | Kingsbury |
| Brookings | Beadle | Sanborn |

Minor

Lake

Moody

Hanson

McCook

Hutchinson

Turner

Lincoln

Bon Homme

Yankton

Clay

Union

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING) TC98-146
BY GCC LICENSE CORPORATION)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)

FAX Received NOV 25 1998

RECEIVED

NOV 30 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DIRECT TESTIMONY OF BRIAN KIRKPATRICK

Q. Please state your name, employer, and business address?

A. My name is Brian Kirkpatrick. I am an employee of Western Wireless Corporation (Western Wireless), the parent corporation of GCC License Corporation ("GCC"), which company is doing business in South Dakota as Cellular One. My business address and telephone number is as follows:

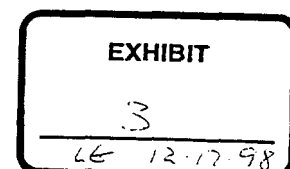
Western Wireless Corporation
3650 131st Ave., SE
Bellevue, Washington 98006
425-586-8700 (tel)
425-586-8090 (fax)

Q. What is your position and responsibility within Western Wireless?

A. I am currently the Treasurer of Western Wireless, responsible for various aspects of the financial affairs of the Company. Previously, I served as Director of Corporate Development, where I was responsible for analyzing business opportunities, specifically those that related to providing competitive telecommunications services.

Q. Please identify your education, experience, and professional qualifications.

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A. I graduated from Washington State University in 1977 with a Bachelor of Arts degree in Communications. Thereafter, I graduated from the University of Washington in 1982 with a Masters degree in Business Administration with concentrations in finance and marketing. From 1982 until my employment with Western Wireless, I was employed full-time with the Telecommunications Consulting group of Ernst & Young (E&Y). During this time, I worked exclusively in the field of telecommunications for many of the firm's clients. I performed and supervised the performance of numerous studies for local exchange carriers (LECs), interexchange carriers (IXCs) and cellular carriers. These studies were used by E&Y clients for internal business planning, filings at the Federal Communications Commission (FCC) and state public utilities commissions, raising capital, and operational requirements.

My assistance to LECs, IXCs and cellular telephone companies has included financial and feasibility analyses, rate and tariff design, interconnection analysis, valuation assessments, marketing research, and strategic planning assistance. I have completed studies for cellular, Personal Communications Service (PCS), and other wireless companies with operations in over 40 states and in several foreign countries, including Canada, Germany, Australia, Argentina, Malaysia, Thailand, the Philippines, Indonesia, India, and Hong Kong. I have spoken before various organizations, including the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association (PCIA), the University of Wisconsin's annual seminar Cellular Radio, the National Telephone Cooperative Association (NTCA), the Organization for the Protection

and Support of Telephone Companies (OPASTCO), numerous state telephone associations, the National Association of Accountants, and Cincinnati Bell Information Systems (CBIS). I also have authored or co-authored several articles.

Q. What are the purposes of your testimony?

A. The purposes of my testimony are to explain that GCC meets the criteria for designation as an ETC, describe GCC's plans for providing universal service within the state of South Dakota, and identify the public interest benefits that would be realized by designating GCC as an Eligible Telecommunications Carrier ("ETC").

Q. Did your Company file a Petition For Designation As An Eligible Telecommunications Carrier (ETC) in the state of South Dakota?

A. Yes. The Petition was filed on August 25, 1998.

Q. Why is your Company seeking designation as an ETC?

A. Section 214(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, provides that a carrier must obtain designation as an ETC from a state commission in order to be eligible to receive universal service support. 47 U.S.C. Section 214(e).

Q. Is it your Company's intent to obtain funding for the provision of universal service to the public?

A. Yes.

Q. Is your Company seeking ETC designation for purposes of federal universal service support?

A. Yes.

Q. Is your Company seeking ETC designation for purposes of state universal service support?

A. Yes, to the extent state universal service support is, or becomes, available.

Q. Are wireless providers, like GCC, eligible for universal service support?

A. Yes. Section 214(e) of the Communications Act of 1934, as amended, specifically provides for the designation of all telecommunications carriers, which includes wireless providers, such as GCC, as ETCs for federal and state universal service support. The FCC further concluded that:

We agree with the Joint Board's analysis and recommendation that any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under Section 214(e)(1). *Universal Service Report and Order*, FCC 97-157 at Para. 145.

Section 214(e)(1) provides:

A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received ---

(A) offer the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution."

47 U.S.C. Sec. 214(e)(1).

Q. Under the Telecommunications Act of 1996, what are the prerequisites for designation as an ETC?

A. Section 214(e)(2) states that a "state commission **shall** upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the state commission" [emphasis added]. The requirements of paragraph (1) of Section 214(e) are that you must: (1) be a common carrier; (2) offer the supported services; (3) advertise the availability of the supported services; and (4) make the supported services available throughout the designated service area.

Q. Is it therefore your understanding that if GCC is a common carrier, offers the supported services, advertises the availability of such services, and makes such services available throughout the designated service area, then the state commission shall designate GCC as an ETC?

A. Yes, for territories served by non-rural telephone companies, the state commission is required under the statute to designate GCC as an ETC, if it meets the eligibility criteria.

Q. Before designating GCC as an ETC, is the state commission required to find that the designation is in the public interest?

A. In territories served by non-rural telephone companies, a public interest finding is not required and is not a prerequisite for designation as an ETC. In territories served by rural telephone companies, a public interest finding is required for designation of more than one common carrier as an ETC.

Q. Is the state commission allowed to consider any other factors or criteria in designating an ETC?

A. No. The FCC clearly stated that neither the FCC nor a state commission is permitted to adopt additional factors or criteria in designating an ETC. The FCC construed Section 214(e)(2) as requiring “that a state commission must designate a common carrier as an eligible carrier if it determines that the carrier has met the requirements of Section 214(e)(1).” Other than a “public interest” determination required for areas served by rural telephone companies, the statute does not permit a state commission to supplement the Section 214(e)(1) criteria that govern a carrier’s eligibility to receive universal service support. *Universal Service Report and Order*, FCC 97-157 at Para. 135.

Q. The first criteria for ETC designation under Section 214(e)(1) is that of a common carrier. Is GCC a common carrier?

A. Yes. A “common carrier” is generally defined in 47 U.S.C. Sec. 153(h) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. Section 332[c](1) of the Communications Act specifically states that a CMRS provider is treated as a common carrier except as otherwise determined by the FCC. The FCC has specifically determined that cellular service, such as that provided by GCC, is considered a common carrier service. 47 C.F.R. Sec. 20.9(a)(7).

Q. As for the requirement that GCC offer the supported service, what are the supported services that must be offered?

A. The Federal Communications Commission (FCC) has identified the following services and functionalities as the services supported by universal service:

1. voice-grade access to the public switched telephone network;
2. local usage;
3. dual tone multi-frequency signaling or its functional equivalent;
4. single-party service or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service;
8. access to directory assistance; and
9. toll limitation for qualifying low-income consumers.

47 C.F.R. Sec. 54.101(a).

Q. Does GCC provide, or have the capability to provide, all of the supported universal services?

A. Yes. GCC currently provides all of the supported services, except toll limitation for qualifying low-income subscribers, which it will provide to qualifying low income customers. As for toll limitation, the FCC no longer requires that an ETC separately provide "toll control" as part of the toll limitation services required under 47 C.F.R. Sec. 54.101(a)(9). See *Universal Service Fourth Order On Reconsideration*, FCC 97-420 (December 30, 1997).

Q. Can you describe GCC's universal service offering?

A. Currently, as a cellular service provider, GCC does not package its services into a "universal service" offering. Upon designation as an ETC, however, GCC will make available to consumer's a "universal service" offering that is competitive to the offerings of the local exchange telephone companies. GCC's "universal service" offering is described in greater detail in the testimony of Christopher R. Johnson, which is being submitted concurrently with my testimony.

Q. Will GCC be seeking universal service funding for conventional cellular service as it provides today?

A. No. GCC will provide services and features as part of its "universal service" offering that are tailored to a consumers telecommunication needs. Consumer preferences will shape and determine the services and features included in a "universal service" offering. GCC believes that, if given the choice, which they do not have today, consumers will likely want certain services and features associated with traditional local exchange service and certain services and features associated with a wireless service offering. For example, consumers may want flat-rated service that is typically associated with local exchange service, but a larger local calling area and mobility options that are typically associated with wireless service. Thus, GCC's universal service offering will not likely look like conventional local exchange service, or conventional cellular service, but will have attributes of both types of service.

Q. A third prerequisite for designation as an ETC is to advertise the availability of the supported services. How does GCC intend to advertise the availability of the supported services?

A. Based upon the recommendations of the Joint Board, the FCC has not adopted any particular standards regarding advertising using media of general distribution under Section 214(e)(1). *Universal Service Report and Order*, FCC 97-157 at Para. 148. GCC will advertise the availability of the supported services and the corresponding charges in a manner that fully informs the general public within the designated service area of the services and charges. GCC currently advertises its wireless services through several different media, including newspaper, television, radio, and billboard advertising. GCC also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. GCC's current advertising is not limited to advertising in business publications alone, but rather includes publications targeted to the general residential market. GCC will use the same media of general distribution that it currently employs throughout the areas served to advertise its universal service offerings. GCC will also comply with form and content requirements, if any, adopted by the Commission in the future and required of all designated ETCs.

Q. You state that GCC will make available a universal service offering to all consumers within the designated service area. How should the Commission establish the designated service area?

A. The Commission clearly has the authority to establish universal service areas.

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier **for a service area designated by the State commission.**

47 U.S.C. Sec. 214(e)(2) [emphasis added]. The service area established by the Commission must be consistent the universal service goals of competitive and technological neutrality. In its ETC Petition, GCC seeks designation as an ETC in all local telephone company exchanges within the state, which is GCC's authorized service area under its FCC licenses, until such time as the Commission establishes competitively neutral ETC service areas applicable to all telecommunications carriers. GCC will make available the supported services to all consumers within its designated service areas using its own facilities or a combination of its own facilities and resale of the services of other facility-based carriers.

Q. Section 214(e)(2) states that the Commission is required to find designating GCC as an additional ETC in territories served by rural telephone companies is in the public interest. Is designating GCC as an additional ETC in the public interest?

A. Yes. Consumers in rural areas will be significantly benefited by the competition brought about by designating GCC as an additional ETC. Competition is in the public interest. One of the underlying purposes of the Telecommunications Act of 1996 was to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment

of new telecommunications technologies.” 100 Stat. 56 (1996). The public interest standard under the Telecommunications Act of 1996 for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. As explained by Senator Dorgan, who offered the amendment to the Senate bill inserting the public interest requirement in Section 214(e)(2), “competition benefits consumers rather than hurts them” and “the best interests of rural consumers are paramount.” 141 Cong. Rec. S7951-52 (June 8, 1995). The failure to designate GCC as an ETC would deprive consumers of the benefits of competition, including increased choices, higher quality, and lower rates. In a competitive market, the rural consumer would be able to choose the services from a carrier that best meets its communications needs. Absent a choice of service providers, the consumer is unable to make a selection based upon service quality, service availability, and rates. The incumbent provider has little or no incentive to introduce new, innovative, or advanced service offerings. Competition promises to bring new and exciting services to the rural consumer. Through the establishment of a competitive universal service system, the rural consumer will be able to keep pace with, and quite possibly outpace, her urban counterpart in terms of the availability of telecommunication services.

Q. Are there other public interest benefits that would be realized by designating GCC as an ETC?

A. Yes. Through the use of wireless technology, GCC is able to provide services and features that would clearly benefit the rural universal service consumer. These benefits are

identified in the testimony of Christopher R. Johnson.

Q. Does this conclude your testimony?

A. Yes.